



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Southern Systems, Inc.--Request for  
Reconsideration  
File: B-224533.2  
Date: June 2, 1987

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### DIGEST

Prior decision is affirmed where reconsideration request does not show any error in fact or law of prior decision.

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### DECISION

The Air Force requests reconsideration of our decision in Southern Systems, Inc., B-224533, Feb. 25, 1987, 87-1 C.P.D. ¶ 214. We affirm our prior decision.

In that decision, we held that the Air Force improperly rejected Southern's low second best and final offer (BAFO) that contained a condition that transportation costs for shipping a hoist to the contractor's facility for repair be "prepaid" by the government. The solicitation required the contractor to transport the hoist to its facility. We found Southern's explanation of a claimed clerical error (the word "prepared" was typed "prepaid") reasonable. We also found that the Air Force should have realized that Southern did not mean to take exception to the solicitation requirement that the contractor transport the hoist because the language in Southern's second BAFO, if interpreted as requiring the government to accept pecuniary responsibility for transporting the hoist, was inconsistent with Southern's first BAFO commitment to pay for these services. Also, under the Air Force's interpretation, the agency would be required to prepay transportation costs for a freight carrier that is to be selected by Southern. We found that such a condition did not seem reasonable since it would be more reasonable for the Air Force to choose the carrier if the Air Force was required to "prepay."

Based on our finding that it was more reasonable that Southern did not intend to take exception to the transportation requirements, we held that the Air Force should have clarified this matter with Southern instead of simply rejecting the firm's proposal. We explained that clarification of such a minor irregularity to correct a clerical mistake, such as the one made by Southern, would

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not constitute discussions requiring reopening discussions with other offerors in the competitive range. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.601 (1986).

On reconsideration, the Air Force argues that the alleged error made by Southern cannot be considered a minor irregularity which could be clarified without reopening discussions with all offerors in the competitive range. The Air Force maintains that the word "prepaid" as used in Southern's second BAFO unambiguously and reasonably affects contract price and performance and, therefore, is not susceptible to treatment as a minor irregularity.

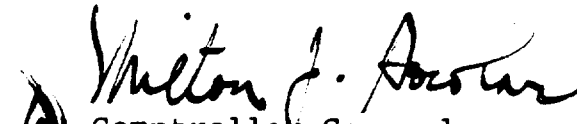
The Air Force, in its report on Southern's original protest, argued (as it again argues here) that the language in Southern's second BAFO that the firm was assuming the hoist would be "prepaid" and packaged on a pallet "was considered to have a material effect on price" and, therefore, the firm's proposal could not be accepted without reopening discussions. We considered this argument in our prior decision and found it to be without merit. As we stated in that decision, reading Southern's proposal in its entirety, the most reasonable interpretation is that Southern did not intend to take exception to the transportation requirements.

The Air Force contends that it would have been improper to refer to Southern's first BAFO and its initial proposal to establish the existence of a mistake, since those documents were outside Southern's second BAFO. FAR, 48 C.F.R. § 15.607(a) provides that contracting officers shall examine all proposals for, among other things, apparent clerical mistakes and that communication with offerors to resolve such matters is clarification, not discussions. FAR, 48 C.F.R. § 14.406-2, referenced in section 15.607(a), cites as examples of apparent clerical mistakes, the obvious misplacement of a decimal point, reversal of prices for f.o.b. destination and price f.o.b. origin and corrected discounts. It seems clear to us that the word "prepaid", in the context of the sentence, was such a clerical error. Clarification, unlike discussions, does not give the offeror the opportunity to revise or modify its proposal, except to the extent (as here) that correction of a clerical mistake will result in a revision. See FAR, 48 C.F.R. § 15.601. The clarification of the word "prepaid," to correct a mistake, would not have risen to the level of discussions.

The Air Force's request for the second BAFO to Southern did not concern the transportation requirements. We think that the appearance of the alleged exception to the transportation requirements for the first time in the last BAFO should have raised a question with the Air Force as to why Southern would change a part of its proposal not touched by

the request for a BAFO and which would render its proposal unacceptable. The appropriate response would have been to review the entire proposal, which consists of the initial offer and all the BAFOs. This does not require the use of "clairvoyance," as the Air Force argues on reconsideration, but merely considering the entire proposal. Such a review would have led the contracting officer to discover the clerical mistake.

While the Air Force disagrees with our reading of Southern's proposal and our holding in the prior decision, mere disagreement with our prior decision does not provide a basis to reverse that decision. See Maintenance Pace Setters, Inc., B-213595.2, June 18, 1984, 84-1 C.P.D. ¶ 635. Since the Air Force has not shown any error in fact or law, our prior decision is affirmed.

  
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of the United States